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LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MASSAPEQUA MANOR, INC., JOHN DEJOHN,  
and RICHARD BIVONA,

MEMORANDUM AND ORDER

Plaintiffs,

CV 13-3733

-against-

(Wexler, J.)

CIENA CAPITAL LLC, BUSINESS LOAN EXPRESS, LLC, BLX CAPITAL, LLC, CIENA CAPITAL FUNDING (NEW YORK) LLC, CIENA CAPITAL FUNDING, LLC, ALLEGIANT PARTNERS LLC, PAUL BIBBO, NADINE LUGO, JAY L. YACKOW, ESQ., JAX VENTURES, LLC, STEVEN COHN, ESQ., ROY LESTER, ESQ., ARENT FOX, FORCHELLI CURTO DEEGAN, SCHWARTZ, MINEO & TERRAN, LLP, PROCTOR WONG, STEVEN PRINCE, LU DIDA PR INC., HOWARD GETZ, DR. ALAN GREENFIELD, SAMUEL MELNICK, ROSEMARY CRUZ, CARLOS RIVERA GONZALES, ROSEANN CAPANEGRO, BENJAMIN KWOK, STEVEN DAVIS, LOUIS MOYET YVONNE FRANCES, QUEENS COUNTY DISTRICT ATTORNEY, OFFICE OF THE QUEENS COUNTY DISTRICT ATTORNEY, KATHLEEN RICE, NASSAU COUNTY DISTRICT ATTORNEY, CHARLES ROBUNDO, RICHARD SMYTHE, OLGA NOVOSAD, MICHAEL RYAN, MICHAEL J. SPOSATO, THE NASSAU COUNTY SHERIFF, THE OFFICE OF THE NASSAU COUNTY SHERIFF, EDWARD MANGANO, THE NASSAU COUNTY EXECUTIVE, THE COUNTY OF NASSAU, ELIZABETH LOCONSOLO, ESQ., INDIVIDUALLY AND IN HER OFFICE CAPACITY AS COUNSEL TO THE NASSAU COUNTY SHERIFF AND THE NASSAU COUNTY EXECUTIVE, "X" LINN, INDIVIDUALLY AND AS DEPUTY SHERIFF OF THE COUNTY OF NASSAU, "X" LINN, INDIVIDUALLY AND AS DEPUTY SHERIFF OF THE COUNTY OF NASSAU, "X" MASTROFIERI, INDIVIDUALLY AND AS DEPUTY SHERIFF OF THE COUNTY OF NASSAU, "X" SCHULZ, INDIVIDUALLY AND AS DEPUTY SHERIFF OF THE COUNTY OF NASSAU, THE NASSAU COUNTY POLICE DEPARTMENT, MARVIN LEVINE, THE NEW YORK STATE LIQUOR AUTHORITY, THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, STEPHEN BUCARIA, JSC., IRA WARSHAWSKY, ANTONIO BRANDVEEN, JSC., LEONARD

B. AUSTIN, JOSEPH SALDINO, LONG ISLAND CATERERS ASSOCIATION, BUTCH YAMALLI, CSH VENTURES, LLC, 201 JR CORP., "X", "Y", "Z" Corporations, whose names and addresses are presently unknown and "JANE DOE" as co-conspirators, whose names and addresses are presently unknown, and 201 JERUSALEM AVE MASSAPEQUA LLC.,

Defendants..

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APPEARANCES:

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WEXLER, District Judge:

Plaintiffs Massapequa Manor, Inc., ("Massapequa Manor"), John DeJohn ("DeJohn"), and Richard Bivona ("Bivona") (collectively, "Plaintiffs") bring this action against the numerous

defendants listed in the above caption. Plaintiffs bring claims for conspiracy to breach contract, conversion of assets, trespass to chattels, fraud, breach of contract, scheme to defraud and steal (RICO claim), violation of civil rights under 42 U.S.C. § 1983, mortgage fraud-criminal enterprise, wrongful dispossession/writ of assistance, conspiracy to violate Plaintiff's rights under 42 U.S.C. § 1985, and for an injunction. After various defendants were dismissed from the case, the remaining defendants moved to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure ("Fed.R.Civ.Pro."), claiming there is no basis for federal jurisdiction and that Plaintiffs fail to state a claim.

Prior to this case, Plaintiff DeJohn filed an action against all of these same defendants before this Court and related to this one, entitled 201 Jerusalem Avenue Massapequa LLC, et al. v. Ciena Capital LLC, et al., 13-CV-3568 ("3568 Action"). The amended complaint in the 3568 Action is identical in all material respects to the amended complaint ("AC" or "Complaint") here. The gravamen of Plaintiffs' case here is the same as in that case: "[t]he well-organized plan of the party defendants was to squeeze the plaintiffs out of business such that another business would purchase the property, to the detriment of the plaintiffs, is illustrative of the campaign of harassment the plaintiffs have endured over the past years in this court system. They have entered into contracts, sold equipment, all to their detriment, to be double-crossed by their own attorneys and municipal officials." AC, ¶ 22.

The facts alleged in this Complaint are identical to the facts alleged in the complaint in the 3568 Action. Compare AC, ¶¶ 58-187,<sup>1</sup> with complaint in the 3568 Action, ¶¶ 55-186. The

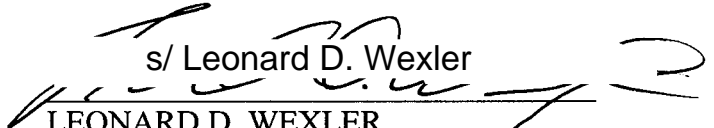
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<sup>1</sup>In many of those paragraphs to the extent a Plaintiff is identified, it is misidentified as "201," the plaintiff in the 3568 Action. See e.g., AC, ¶ 97.

claims asserted here are exactly the same as those asserted in the 3568 Action.<sup>2</sup> Compare AC, ¶¶ 197-408, with complaint in the 3568 Action, ¶¶ 188-403. Defendants here move to dismiss on the same grounds.

Having reviewed the parties' submissions, and for the reasons stated in this Court's Memorandum and Order of September 28, 2015 in 201 Jerusalem Avenue Massapequa LLC, et al. v. Ciena Capital LLC, et al., 13-CV-3568, defendants' motion to dismiss is granted, since Plaintiffs fail to state a claim under 42 U.S.C. § 1983, 42 U.S.C. § 1985 and 18 U.S.C. § 1962. The Court declines to exercise supplemental jurisdiction over the remaining state claims, and this case is dismissed. For the reasons stated in the other case, the Court grants the request of 201 JR Defendants for costs of this motion, and directs all moving defendants are directed to submit a proposed order detailing costs incurred in connection with the motions. The Clerk of the Court is directed to terminate the motions at ECF entries 115, 116 and 117, and close this matter.

SO ORDERED.

  
s/ Leonard D. Wexler  
LEONARD D. WEXLER  
UNITED STATES DISTRICT JUDGE

Dated: Central Islip, New York  
September 29, 2015

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<sup>2</sup>This is so even though an early paragraph of the complaint states that different claims are asserted. See AC, ¶ 10.